

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

MAX CURRY AND BARBARA CURRY,)
Plaintiffs,)
)
v.) No. 08-0298-CV-W-FJG
)
EXEL DIRECT INC.,)
)
and)
)
BUBLITZ MACHINERY COMPANY)
Defendants.)

ORDER

Pending before the Court is Plaintiffs' Motion for Remand (Doc. No. 6). Defendant Bublitz Machinery Company removed this matter from the Jackson County Circuit Court in Independence, Missouri on April 22, 2008. Defendant Exel Direct Inc. filed a Joinder and Consent Removal and its Answer on Friday, May 2, 2008 (Doc. No. 5). Plaintiffs contend that removal in this matter is defective because defendant Bublitz Machinery Company removed this matter as a forum defendant. Plaintiffs state that defendant Bublitz Machinery Company is incorporated in Missouri with its principal place of business in North Kansas City, Missouri.

The Court finds that removal was improper in this matter. Where diversity of citizenship is the only basis for removal, removal is precluded if any defendant is a citizen of the state in which the action is filed. See 28 U.S.C. §1441(b). Section §1441(b) states as follows:

Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if

none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

In Hurt v. Dow Chem. Co., 963 F.2d 1142, 1145 (8th Cir. 1992), the Court stated:

Title 28 U.S.C. § 1441(b) makes diversity jurisdiction in removal cases narrower than if the case were originally filed in federal court by the plaintiff. A defendant may not remove to federal court on the basis of diversity if any of the defendants is a citizen of the state where the action was filed.

Therefore, because defendant Bublitz Machinery Company is a Missouri resident, the removal in this case was improper and this Court lacks subject matter jurisdiction. Accordingly, plaintiffs' Motion for Remand (Doc. No. 6) is **GRANTED**. This case is hereby remanded to the Jackson County Circuit Court for further proceedings.

IT IS SO ORDERED.

Date: 5/16/08
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge